

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-342-C - ORDER NO. 2003-742  
DECEMBER 23, 2003

IN RE: Phillip A. Bragg d/b/a ALCO Bonding,	)	ORDER APPROVING
	)	STIPULATION AND
Petitioner,	)	APPROVING
	)	SCHEDULE
vs.	)	
	)	
Talton Communications of Carolina, Inc. and	)	
Evercom Systems, Inc.,	)	
	)	
Respondents.	)	

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This matter comes before the Public Service Commission of South Carolina ("Commission") on a Stipulation and Agreement filed by the parties in the above-referenced proceeding. The Stipulation and Agreement sets forth a proposed schedule to coordinate filing deadlines and a hearing date in this case.

This proceeding was instituted by the filing of a Petition for Declaratory Order or in the Alternative for Appropriate Damages by Petitioner herein Philip A. Bragg d/b/a ALCO Bonding. According to the pleadings, the Petitioner herein filed an action in federal court against Talton Communications of Carolina, Inc. and Evercom Systems, Inc. (hereafter referred to as "Evercom" or "Respondent"). By Order dated November 22, 2002, the Honorable C. Weston Houck of the United States District Court for South Carolina ruled that "it is better to stay this action and defer to the appropriate agency for

an administrative ruling.” Order of Judge Houck, pp. 6-7 (November 22, 2002). In making his ruling, Judge Houck invoked the doctrine of primary jurisdiction which, as stated in Judge Houck’s Order, “requires a federal court to refer a dispute to an administrative agency and stay a pending court action where it is likely that the case will require resolution of issues that, under a regulatory scheme, have been placed in the hands of an administrative body.” Order of Judge Houck, p. 3 (citation omitted) (November 22, 2002). After finding that a District Court sitting in diversity jurisdiction could properly defer to a state agency under the primary jurisdiction doctrine, Judge Houck found the Commission to be a specialized agency that is well equipped to decide whether the defendants acted in a manner that comports with the 1995 tariff at issue in the case. Order of Judge Houck, p. 4-5, 6 (November 22, 2002). Judge Houck then directed that that the federal court action be stayed and ordered that either party petition the Commission to assume jurisdiction over any or all of the issues presented in the complaint. Thereafter, the Petitioner filed its Petition which the Commission received on November 19, 2003.

After the receipt of the Petition, the Commission’s Deputy Executive Director served the Petition on the Respondent with instructions to answer the Petition within thirty days as required by the Commission’s Rules and Regulations. The Respondent complied with the instructions of the Deputy Executive Director and on December 10, 2003, filed an Answer and Cross-Petition for Declaratory Order.

On December 15, 2003, the parties filed a Stipulation and Agreement in which the parties agree to a schedule of dates for filing deadlines and a hearing on this matter. Upon

consideration of the matter before it which is the approval of the proposed schedule for filing dates and hearing date as set forth in the Stipulation and Agreement filed December 15, 2003, the Commission finds the proposed schedule reasonable and hereby approves the schedule set forth in the Stipulation and Agreement. The Stipulation and Agreement is attached to this Order as Exhibit 1.

Accordingly and pursuant the Stipulation and Agreement, the Commission orders that Petitioner's (Bragg's) response to Respondent (Evercom's) Petition shall be due on or before **January 10, 2004**. Pursuant to the Stipulation and Agreement and 26 S.C. Regs.103-869(C)(Supp. 2002), the Commission hereby orders that twenty-five copies of the direct testimony and exhibits of the parties shall be prefiled on or before **January 13, 2004**. (Direct testimony and exhibits may be post-marked on these dates.) Any rebuttal testimony and exhibits of the parties shall be prefiled on or before **January 20, 2004**. (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates.)

The parties shall serve their prefiled testimony and exhibits on all other parties of record as required by the Commission's Rules and Regulations. All parties are reminded that all witnesses must be present during any hearing in this matter at the call of the Chairman, or the Commission may decline to allow the witnesses' testimony to be read into the record of the proceeding, and/or may decline to allow the witnesses' exhibits to be entered into the evidence of the case.

Please take note that any party requesting modification of this schedule must file a request for such modification with the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Bruce F. Duke, Deputy Executive Director

(SEAL)



WHEREAS, on December 11, 2003, counsel for Bragg and counsel for Evercom conducted and participated in a telephonic conference call with James Spearman, Senior Technical Advisor to the Commission, and F. David Butler, General Counsel to the Commission. The purpose of this telephonic conference call was to schedule and coordinate filing deadlines and to set a hearing date for the above-captioned matter, with the understanding that any deadlines and dates agreed upon by the parties were subject to Commission approval.

NOW THEREFORE, based upon the foregoing, and subject to Commission approval, Bragg and Evercom hereby agree and stipulate as indicated below:

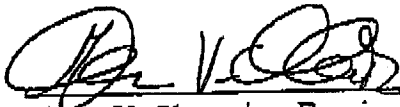
1. Bragg's response to the Evercom Petition shall be due on or before January 10, 2004;
2. Direct testimony and exhibits shall be pre-filed and served by both Bragg and Evercom in regards to their respective petitions on or before January 13, 2004;
3. Any rebuttal testimony and exhibits shall be pre-filed and served by Bragg and Evercom on or before January 20, 2004;
4. A public hearing will be conducted in the Commission's hearing room located at Synergy Business Park, 101 Executive Center Drive, Columbia, South Carolina on January 27, 2004 at 2:30 p.m.; and
5. Any post-hearing briefs or proposed orders that any party chooses to file or that the Commission may require will be due by Bragg and Evercom on or before February 3, 2004, or within seven (7) days following conclusion of the hearing to be held in this case, whichever date is later.

WHEREFORE, Bragg and Evercom have evidenced their understanding and

acknowledgement of this Agreement by their respective counsel's signatures below

effective this 11th day of December, 2003.

WE SO CONSENT:

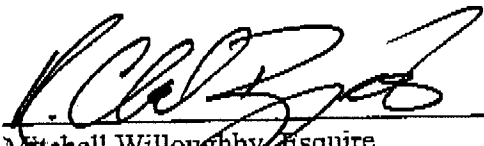


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WE SO CONSENT:



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